

**SUPREME COURT OF INDIA                      REPORTABLE**

**Bench: Justices C.T. Ravikumar and Rajesh Bindal**

**Date of Decision: 6th March 2024**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3431 OF 2023

**XXXX ... APPELLANT(S)**

**VERSUS**

**STATE OF MADHYA PRADESH & ANOTHER ... RESPONDENT(S)**

**Legislation:**

Section 376(2)(n) and 506 of the Indian Penal Code (IPC)

Section 482 of the Cr.P.C.

Section 164 of the Cr.P.C.

**Subject:** Appeal against the High Court's dismissal of a petition to quash an FIR involving allegations of rape under a false promise of marriage.

**Headnotes:**

**Criminal Law – Quashing of FIR – Sexual Offence – Allegation of Rape Under False Promise to Marry – High Court's Dismissal of Quashing FIR Challenged – Appellant contends FIR is an abuse of process, highlighting discrepancies in complainant's statements and her prior marital status - FIR based on complainant's claim of being raped under false promise to marry. [Para 1, 2, 8]**

**Consent and Misconception of Fact – Analyzed – The Court deliberated on the nature of consent given by the prosecutrix, who was already married and had a child. It assessed whether the consent was under a misconception of fact and if the accused could be held guilty of rape under Section 375 of IPC in such a scenario. Reliance was placed on the Court's previous judgment in Naim Ahamed v. State (NCT of Delhi). [Para 8, 9]**

Role of Complainant's Maturity and Understanding – Considered – The Court noted the complainant's age, maturity, and understanding in discerning the moral and immoral aspects of her actions, considering that she was a mature woman, mother of a child, and consented to a relationship during the subsistence of her marriage. [Para 8, 9]

Quashing of FIR and Subsequent Proceedings – Held – The FIR No.52 dated 11.12.2020, registered at Police Station, Mahila Thana, District Satna (M.P.), and all subsequent proceedings were quashed due to the reasons cited, encompassing the nature of consent, discrepancies in statements, and absence of a false promise under misconception of fact. [Para 10]

Decision – The Supreme Court allowed the appeal, setting aside the order of the High Court and quashing the FIR and subsequent proceedings against the appellant. [Para 10, 11]

#### **Referred Cases:**

- Naim Ahamed v. State (NCT of Delhi) 2023 SCC OnLine SC 89
- Prashant Bharti v. State (NCT of Delhi) (2013) 9 SCC 293

### **J U D G M E N T**

#### **Rajesh Bindal, J.**

1. The appellant in the present case is aggrieved of the order<sup>1</sup> passed by the High Court<sup>2</sup> whereby a petition<sup>3</sup> filed by him under Section 482 Cr.P.C. for quashing of FIR<sup>4</sup> was dismissed.

2. Learned counsel for the appellant submitted that the FIR in the case in hand, which was got registered by respondent No.2/complainant is nothing else but an abuse of process of law. The complainant was a married lady having a grown up daughter of 15 years of age living with her parents. Claiming that in the same house, the appellant was having

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<sup>1</sup> Order dated 01.08.2022

<sup>2</sup> High Court of Madhya Pradesh at Jabalpur

<sup>3</sup> M.CR.C. No. 15992 of 2021

<sup>4</sup> FIR No. 52 dated 11.12.2020 registered at P.S. Mahila Thana, Dist. Satna, (M.P.) under Sections 376(2)(n) and 506 IPC

physical relations with her with the consent of her parents and daughter will be hard to believe that too when she was already married. There could not be any question of promise to marry given by the appellant to her at that stage. There are large discrepancies in the complaint made to the police on the basis of which the FIR was registered if considered in the light of the statement which the complainant got recorded under Section 164 Cr.P.C. The relations between the parties are shown to be consensual, if any. The mis-statement by the complainant is evident from the fact that she claimed to have got divorce from the earlier marriage on 10.12. 2018 and married with the appellant in a temple in January 2019 but it is belied from the fact that decree of divorce from the earlier marriage of the complainant was passed only on 13.01.2021. There was no question of any marriage prior thereto. The initiation of proceedings against the appellant being an abuse of process of law deserve to be quashed. In support of the arguments, reliance was placed upon the decisions of this Court in **Naim Ahamed v. State (NCT of Delhi)**<sup>5</sup> and **Prashant Bharti v. State (NCT of Delhi)**<sup>6</sup>.

3. Learned counsel for the State submitted that after investigation, charge-sheet has already been filed. The Courts are normally slow to quash the FIR at that stage. In the case in hand, allegation of rape on false promise to marry is clearly made out. At the stage of quashing, only the contents in the FIR could be seen. On a perusal thereof, a clear case is made out against the appellant.

4. Learned counsel for the complainant submitted that on account of dispute with her husband from the earlier marriage, the complainant was living with her parents. She, at that time, was having a grown up daughter aged 15 years. The appellant was living in their house as a tenant. Finding that the complainant in disturbed matrimonial life, from the advances made by the appellant, the complainant fell in the trap. On a false promise to marry, both had started having physical relations. They had even solemnized marriage in a temple in January 2019. Even her family also knew about their relations and marriage. It was all in good faith on the promise made by the appellant as the appellant had even

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<sup>5</sup> 2023 SCC OnLine SC 89

<sup>6</sup> (2013) 9 SCC 293

shown the complainant as a nominee in an insurance policy purchased by him. With these facts on record, a clear case of rape on false promise to marry is made out against the appellant. The FIR does not deserve to be quashed at the initial stage.

5. Heard learned counsel for the parties and perused the paper book.
6. Firstly, we refer to the stand taken by the complainant in the FIR and the statement she got recorded under Section 164 Cr.P.C. There are discrepancies therein.

6.1 In the FIR, she stated that she was managing her own cloth shop. As there was a dispute with her husband, she was living separately. On 10.12.2018, she got divorce from her husband. She has a daughter aged 15 years. In 2017, Sadbhav Company had taken first floor of their house on rent in which the appellant, who was working with the company, stayed. During spare time, he would come and sit on her shop. Gradually, the relations developed. As she was living separate from her husband, the appellant proposed that in case she takes divorce, he will marry her. After the divorce of the complainant, on 10.01.2019, at about 11.00 PM, the appellant came to her room and had physical relations. He did not stop even when she said that they were yet to be married. Further, on a promise to marry, he had relations with her on 06.06.2020. When she insisted for marriage, the appellant said that his family was not agreeing. Finally, he refused on 11.12.2020. Thereafter, the FIR was got recorded on 11.12.2020.

6.2 While getting her statement recorded under Section 164 Cr.P.C., she admitted that she knew the appellant since 2017. On account of dispute with her husband, she was living with her parents. As she got acquainted with the appellant, they fell in love. In 2018, the appellant went to Maharashtra for job. However, he used to visit her home and take care of the complainant as well as her daughter. In 2019, the appellant assured the complainant that he will marry her in case she takes divorce from her husband who used to harass and beat her. For this reason, she divorced her husband and solemnized marriage with the appellant in a temple in January 2019. Thereafter, they started living together with her daughter born from the previous marriage. Despite assurance, the appellant did not solemnize court marriage. After marriage was solemnized in temple, treating the appellant as her husband, they both started leading a married life having physical relations from January 2019 till June 2020. The

appellant treated the complainant as his wife. Thereafter, the appellant refused to respond to her calls and even marry her.

6.3 There was complete change in the stand of the complainant in her statement recorded under Section 164 Cr.P.C. The fact remains that the parties admittedly were in relations from 2017 onwards. Some alleged promise to marry came in January 2019, from where they started having physical relations. It has also come on record that it is not only the consent of the complainant which is clearly evident but also of the parents and daughter of the complainant as they were living in the same house, where allegedly the appellant and the complainant were having physical relations.

7. Further, in the FIR the complainant stated that she got divorce from her earlier husband on 10.12.2018. In the statement under Section 164 Cr.P.C., she stated that marriage between the appellant and the complainant was solemnized in a temple in January 2019. However, the date of divorce as claimed by the complainant is belied from the copy of the decree annexed with the appeal as Annexure P-9, where divorce by mutual consent was granted to the complainant and her husband vide judgment dated 13.01.2021. The aforesaid fact could not be disputed. Meaning thereby, the complainant besides the facts in the FIR and also in the statement under Section 164 Cr.P.C. regarding her divorce from the earlier marriage, sought to claim that she had re-married with the appellant during subsistence of her earlier marriage.
8. From the contents of the complaint, on the basis of which FIR was got registered and the statement got recorded by the complainant, it is evident that there was no promise to marry initially when the relations between the parties started in the year 2017. In any case, even on the dates when the complainant alleges that the parties had physical relations, she was already married. She falsely claimed that divorce from her earlier marriage took place on 10.12.2018. However, the fact remains that decree of divorce was passed only on 13.01.2021. It is not a case where the complainant was of an immature age who could not foresee her welfare and take right decision. She was a grown up lady about ten years elder to the appellant. She was matured and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of her earlier marriage. In fact, it was a case of betraying her husband. It is the admitted case of the prosecutrix that even

after the appellant shifted to Maharashtra for his job, he used to come and stay with the family and they were living as husband and wife. It was also the stand taken by the appellant that he had advanced loan of ₹1,00,000/- to the prosecutrix through banking channel which was not returned back.

9. Similar issue was considered by this Court in **Naim Ahamed's** case (supra) on almost identical facts where the prosecutrix herself was already a married woman having three children. The complaint of alleged rape on false promise of marriage was made five years after they had started having relations. She even got pregnant from the loins of the accused. Therein she got divorce from her existing marriage much after the relations between the parties started. This Court found that there cannot be any stretch of imagination that the prosecutrix had given her consent for sexual relationship under misconception. The accused was not held to be guilty. Relevant paragraph 21 thereof is extracted below:

“21. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as ‘rape’ by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even

obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 of Cr.P.C. had stated that she had filed the complaint as he refused to fulfill her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 of IPC.”

9.1 The aforesaid arguments squarely cover the legal issue raised by the appellant.

10. For the reasons mentioned above, the impugned order passed by the High Court is set aside. FIR No.52 dated 11.12.2020, registered under Section 376(2)(n) and 506 IPC at Police Station, Mahila Thana, District Satna (M.P.) and all subsequent proceedings thereto are quashed.

11. The appeal is accordingly allowed.

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